

PATENT

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

Applicant(s)	Terstappen et al.	Examiner:	C.H. Yaen
Serial No.:	09/865,048	Group Art Unit:	1642
Filed:	May 24, 2001	Docket:	890-2 FWC/CIP/CPA/CON
For:	PHAGE ANTIBODIES	Dated:	November 26, 2003

Commissioner for Patents
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*I hereby certify this correspondence is being deposited
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signature: *Julie A. Watts*

**DECLARATION OF PRIOR INVENTION IN THE UNITED STATES
UNDER 37 CFR §1.131 TO ANTEDATE CITED PATENT**

Sir:

We, Leon W.M.M. Terstappen, M.D., Ph.D. and Ton Logtenberg, Ph.D., declare as follows:

1. We are joint inventors of the above-identified application.
2. We are familiar with Tse, et al., WO94/26787 and the response to the office action mailed September 9, 2003, submitted herewith.
3. The inventive concept generally is related to the use of phage library display technology to isolate antibodies directed to surface markers on subpopulations of cells in a heterogeneous mixture containing both non-target and target cells. The non-target cells and/or target cells are detectably labeled.

4. The inventive concept is also generally related to the use of phage library display technology to isolate antibodies directed to surface markers on target cells.

5. We conceived of the invention described in claims 9-11, 13-16, 19 and 22-29, and reduced the invention to practice in the United States, as demonstrated by the evidence submitted and discussed below.

6. A claim chart is attached as Exhibit A. The claim chart correlates each element of the claims (first column) with the evidence that demonstrates conception and reduction to practice (second column). We have reviewed the claim chart submitted as Exhibit A and attest to its accuracy. We confirm that each piece of evidence described in the second column establishes conception and reduction to practice of each claim element described in the first column.

7. The first source of information relied upon in the claim chart is a memorandum from Dr. Leon Terstappen to various individuals at Becton Dickinson located in New Jersey. The memorandum and the materials attached to the memorandum are attached hereto as Exhibit B. We have reviewed this material and attest to the fact that it is dated before the November 24, 1994 effective date of Tse et al.

8. The second source of evidence for conception and reduction to practice before the effective date of the Tse, et al reference are notebook materials generated from laboratory experiments performed by John deKruif under the direction and supervision of the inventors. These experiments were performed at Becton Dickinson Immunocytometry Systems (BDIS) in California. A copy of the notebook materials relied upon in the claim chart (the first four

pages of the notebook) are attached as Exhibit C. We have reviewed these materials and attest to the fact that they are pages from a laboratory notebook of John deKruif, and that the experiments performed were all dated before the November 24, 1994 effective date of Tse et al.

9. Dr. Logtenberg, one of the inventors and one of the signatories hereto, has prepared a more detailed description of the information contained on page 3 of the notebook from Exhibit C. The detailed description, which is attached as Exhibit D1, also contains a statement about the data shown on page 4 from the notebook. One of our U.S. patent attorneys, James F. Harrington, prepared a summary of Dr. Logtenberg's detailed description. The summary is attached as Exhibit D2. We have reviewed Exhibits D1 and D2 and attest to the fact that the description of the experiment recorded on pages 3 and 4 from the notebook is accurate. We also attest to the fact that the notation of the steps from the method of Claim 9 and 19 are accurately identified in Exhibits D1 and D2.

10. The third source of evidence relied upon in the claim chart to show conception and reduction to practice before the effective date of Tse et al. are plots showing the results of flow cytometry studies performed at the BDIS facility in California. These plots are attached hereto as Exhibit E. These studies show the isolation, in accordance with the invention, of single chain antibodies binding to cells, as demonstrated by the various staining patterns obtained. We have reviewed this material and attest to the fact that these studies were performed before the November 24, 1994 effective date of Tse et al.

11. Therefore, we confirm that the claimed invention was conceived and reduced to practice before November 24, 1994.

12. As a person signing below:

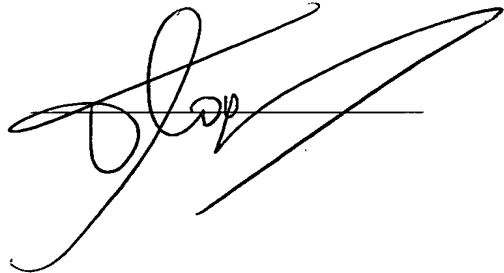
I hereby declare that all statements made herein of my own knowledge are true and that all statements made on information and belief are believed to be true; and further that these statements were made with the knowledge that willful false statements and the like so made are punishable by fine or imprisonment, or both, under Section 1001 of Title 18 of the United States Code and that such willful false statements may jeopardize the validity of the application or any patent issued thereon.

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Date: dec 15, 2003 Inventor's Signature



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